IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

RP.No. 1077 of 2006(N)

AGAINST THE JUDGEMENT/ORDER IN OP.10638/2000 Dated 27/01/2006
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: REVIEW PETITIONERS/RESPONDENTS:
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1. THE ASSISTANT EXECUTIVE ENGINEER,
   ELECTRICAL MAJOR SECTION, KERALA STATE
   ELECTRICITY BOARD, GURUVAYOOR.

2. THE EXECUTIVE ENGINEER,
   ELECTRICAL DIVISION, KERALA STATE
   ELECTRICITY BOARD, KUNNAMKULAM.

3. KERALA STATE ELECTRICITY BOARD,
   REP. BY ITS SECRETARY, VAIDYUTHI BHAVAN,
   THIRUVANANTHAPURAM.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENTS:

M/S.DHANYA TOURIST HOME,
GURUVAYOOR, THRISSUR DISTRICT,
REP. BY ITS MANAGIG PARTNER,
MR.K.S. SAMJITH.

BY ADV. SRI.T.A.SHAJI

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH, J.

R.P.No.1077 of 2006
in
O.P.No.10638 of 2000

Dated 19th October, 2007.

O R D E R

This is a petition to review the judgment dated 27.1.2006 in O.P.No.10638/2000. The issue pertains to the steps taken by the review petitioners for realizing proportionate energy charges on account of the alleged unauthorised load. Following the Division Bench judgment in W.A.1231/03, this Court held that there shall not be penalty by way of proportionate energy charges and that the penalty should be limited to the fixed charges.

2. Sri.C.K.Karunakaran, learned counsel appearing for the Board submits that the Division Bench only prohibited the levy of maximum penalty and the matter has to be decided on a case to case basis. I am afraid, the contention cannot be appreciated. Admittedly, there is no prescribed norm or guidelines in such situations to be examined on a case to case basis. That would only pave way to unhealthy situations of arbitrariness. That apart, since the energy charges can be levied only for the

measured energy, whether there is any scope at all for such examination is yet another issue, though Sri.Karunakaran contended that it is not the energy charges that is levied, but the penalty. If as a matter of fact it is the penalty that is levied, there is no purpose in using the expression 'proportionate energy charges'. Once the expression used is 'proportionate energy charges', that would only indicate the quantum of energy that could have been consumed by such installation using the said additional load, which is against the spirit of Section 26(6) of the Indian Electricity Act, 1910, since irrespective of the connected load, the energy consumed has already been properly measured and billed. In fact the Board itself in the case of commercial consumers has admitted and applied the above principle, as noted in the writ appeal judgment. In that view of the matter, there is nothing on merits to review the judgment. The review petition is hence dismissed.

KURIAN JOSEPH, JUDGE.

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